

Remarks

Claims 31- 49 are pending in the application. Claims 31-45 stand rejected under 35 U.S.C. § 103(a). Claims 46-48 have been added. Support for the new claims can be found throughout the specification and in particular page 6, line 25 to page 7, line 5 and page 9, lines 5-15.

Rejections under 35 U.S.C. § 103

Claims 31-40 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Pat. No. 5,460,833 ("Andrews") in view of U.S. Pat. Nos. 5,188,822 ("Viccaro") and 5,188,822 ("Carmody"). Viccaro discloses benzoic acid for use as an antimicrobial agent in dental compositions. Carmody discloses salicylic acid as a antimicrobial agent in skin formulations.

The Examiner reasons that since "all active composition components herein are known to be useful in antimicrobial compositions, it is considered obvious to combine them into a single composition to form a third composition useful for the very same purpose." This recites at most an additive effect but provides no teaching that the combination of components, i.e., benzoic acid or salicylic acid and fatty acid monoester, would provide a "synergistic antimicrobial activity" as provided in claim 1, as amended. Secondary references Viccaro and Carmody do not cure the deficiencies of Andrews.

Claims 41-45 stand rejected as under 35 U.S.C. § 103(a) as being unpatentable over Andrews *et al.* (U.S. Pat. No. 5,569,461) in view of Viccaro and Carmody. The Office Action recognizes that Andrews *et al.* does not disclose a kit comprising the same known composition or an article of manufacture comprising the same known composition. However, the Office Action asserts that one having ordinary skill in the art at the time the invention was made would have been motivated to prepare a kit because preparation of a kit or an article of manufacture is considered well within the skill of the artisan and involved merely routine skill in the art.

Applicants respectfully disagree with the position set forth in the Office Action. Table 3 shows that the one-part antimicrobial formulation provided an average of about a 5.49 decimal log reduction in colony forming units (CFUs). The two-part formulation provided an average of about a 6.54 decimal log reduction of CFUs. Thus, surprisingly, the two-part formulation, the formulation corresponding to that provided in the kit claim of claim 41, provided more than a 10-fold increase in antimicrobial activity compared to a one-part formulation having the same composition, i.e., the formulation corresponding to that provided in Andrews *et al.*

Similar results are shown in Table 4, where the two-part formulation (run 24) provided a 6.46 decimal log reduction in CFUs, while the one-part formulation having the same composition provided an average of about a 5.14 decimal log reduction in CFUs. Thus, the two-part formulation, corresponding to the formulation provided in the kit of claim 41, provided more than a 1.3 decimal log reduction in CFUs, or about a 20-fold increase in antimicrobial activity compared to the one-part formulation, corresponding to the formulation provided in Andrews *et al.*

Even if, *arguendo*, one of skill in the art at the time the invention was made would have been motivated to prepare a kit comprising a known composition, as stated in the Office Action, one would not have been motivated to provide a kit in which the components are separated so that the two-part formulation provides increased antimicrobial activity compared to the known, one-part formulation. Moreover, neither Andrews *et al.* nor any other reference teaches or suggests how to separate the components of the formulation in order to obtain a 10-fold increase in antimicrobial activity.

Applicants submit that claims 31-49 as amended are patentable under 35 U.S.C. § 103(a), and respectfully request that the rejections be withdrawn.

CONCLUSION

In view of the amendments and remarks provided above, Applicants submit that all claims under consideration are in condition for allowance. Examination and allowance of the claims is respectfully requested.

Respectfully submitted,


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